

REMARKS

Claims 1-39 are currently pending in the application. By this amendment, claims 1, 8, 15 and 36 are amended for the Examiner's consideration. The above amendments do not add new matter to the application and are fully supported by the specification. For example, support for the amendments is provided at Figures 3 and 4, and the description thereof. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

Amendments Should be Entered

Applicants submit that entry of the above amendments is proper. The amendments place the application in condition for allowance and do not add new issues that require further search and/or consideration. For example, the amendment to claim 1 clarifies the movement of the diverting arm, while the amendment to claim 15 clarifies that only one diverting arm is necessary. Claim 36 has been amended to provide a reference for the horizontal and vertical orientations. Such clarifications would appear to have been considered by the Examiner in view of Applicants' previous arguments and the present comments of the Examiner. Claim 8 is placed into allowable condition. Accordingly, Applicants request entry of the amendments and allowance of the claims. The amendments would also place the application in better form for appeal, if they are not allowed.

Allowable Subject Matter

Applicants appreciate the indication that claim 8 contains allowable subject matter. Applicants further appreciate the indication that claims 19 and 26-35 are allowed. Claim 8 is amended to include the subject matter of base claim 1, and accordingly should thus be considered allowed. Applicants further submit that all of the claims are allowable for the reasons set forth below.

35 U.S.C. §102 Rejection

Claims 1-7, 11, 12 and 36-39 were rejected under 35 U.S.C. §102(b) for being anticipated by USPN 5,280,694 to Malow. This rejection is respectfully traversed.

In order to reject a claim under 35 U.S.C. § 102, a single prior art reference must contain each and every limitation of the claim, either expressly or under the doctrine of inherency. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570 (Fed. Circ), cert. denied, 488 U.S. 892 (1988). To "contain" the limitation the reference must explicitly describe the limitation, or describe an operation inherently requiring the limitation, completely enough to place limitation "in the possession of the public." *In re Epstein*, 32 F.3d 1559, 31 USPQd 1817 (Fed. Cir. 1994). Applicants submit that the use of Malow does not meet this criteria.

Independent Claim 1

Claim 1 recites, in part,

a feeding area having an ingress and egress;
a diverting arm swingable between an open position remote from the egress of the feeding area and a closed position proximate to the egress of feeding area, in the open position, the diverting arm allowing product to enter the feeding area

Applicants appreciate the arguments presented by the Examiner in the present office action. However, Applicants submit that the separating module of Malow is not the same as the diverting arm of the claimed invention.

In Malow, small goods are transported through a transporting path 1 to a separating module 2 composed of laterally pivotal conveyor belts. As submitted previously, the separating module 2 of Malow is not swingable between an open position and a closed position; regardless of the movement of the separating module 2, the two opposing belts of the separating module 2 always remain in the same relative position to one another. Hence, the separating module 2 does not include a diverting arm swingable between an open position and a closed position. (See Figures 1 and 2.)

Additionally, even assuming *arguendo* that that the separating module 2 is swingable between an open position and a closed position (which Applicants do not agree), Applicants submit that separating module 2 does not swing

between an open position remote from the egress of the feeding area 1 and a closed position proximate to the egress of feeding area 1. As shown in the figures, the hinged portion of the separating module 2 is immediately adjacent to the feeding area 1. Accordingly, in this configuration, the separating module 2 always remains in the same position, near the egress of the feeding area 1. In fact, in the Malow device, it is the side of the separating module 2 remote from the egress of the feeding area which moves. Thus, the configuration of Malow is completely opposite to that of the claimed invention.

Independent Claim 36

Claim 36 recites, in part

... dropping product in a substantially horizontal orientation into the container;
covering the container to ensure product is not ejected therefrom during the dropping step; and
rotating the container from the inclined configuration to the horizontal configuration to position each product in the container from the horizontal orientation to the substantially vertical orientation with respect to the travel path.

Applicants appreciate the fact that the Examiner has now considered these features of the claimed invention; however, Applicants submit that Malow does not shows such features. For example, Malow does not show covering the container to ensure that product is not ejected therefrom. In Malow, the product is guided into the container, but there is no cover on the container, or

associated with the container during the loading process. Specifically, as described in Malow at cols. 1 and 2,

The small goods 18 are transported onto surface 3 by means of separating module 2 (FIG. 3) and pusher 6 pushes them over retaining threshold 4 on surface 3 (FIGS. 4 and 5). This process is repeated until the fill level of the container has been reached. The fill height is here monitored by sensors. Once the fill height is reached, rake 15 pivots onto surface 3 and pushes all small pieces 18 into container 8 (FIGS. 5 and 6).

Then, the teeth 17 of the angular covering rake 5 pivot upward and retain in the container the small pieces 18 that have been pushed into the container (FIG. 7). The push-in rake 15 may then be pushed upward and retracted as shown in FIG. 8 by arrows 19, 20.

As thus described, the teeth 17 of the rake do not cover the container during the loading process. It only covers the container after the container is completely filled. Accordingly, there is nothing in the Malow reference that would provide a covering to ensure product is not ejected therefrom during the dropping step.

Additionally, product in the Malow device is not dropped into the container. Instead, as clearly shown in figures 4 and 5, the product is slid into the container. This is because the container is at the same height as the surface 3.

Lastly, as previously discussed, in Malow, the product in the container is not oriented in the vertical position when the container is rotated to the horizontal plane; instead, the product in the Malow disclosure is stacked in the

container in the horizontal position. More specifically, in Malow, the product is ejected onto the surface 3 in a vertical orientation, pushed into the container in the vertical orientation and then the container is rotated to the horizontal position such that the product in the container is also oriented in the horizontal orientation. This is completely opposite to the claimed invention, wherein the product is initially in the horizontal orientation and then when in the container, rotated, with the container, into the vertical orientation. To clarify this feature, Applicants have amended claim 36 to provide a reference point, as suggested by the Examiner.

Dependent Claims

Applicants note that these claims depend from allowable base claims and are thus allowable for the reasons stated above. Also, these claims are distinguishable over Malow, on their own merits. By way of specific example, Malow does not show:

1. A continuous belt driven system proximate to the at least one corresponding diverting mechanism for transporting the product between a first and a second of the at least one corresponding diverting mechanisms (Claim 4);

2. a lifting device for lifting the at least one corresponding pivoting mechanism between the loading position and the initial/final position (Claim 6);
3. at least one corresponding pivoting mechanism stacks the product in a vertical orientation within the container (Claim 11);
4. a control for controlling the movement of the diverting arm and injection of the product into the container from the ejection station (Claim 12); and/or
5. the feeding area is formed substantially by an upper and lower mechanism (claim 39).

In fact, Malow would not even have any requirement for such features. Malow shows only a single induction system and hence would not require a continuous belt driven system proximate to the at least one corresponding diverting mechanism for transporting the product between a first and a second of the at least one corresponding diverting mechanisms. Malow also would not require a feeding area with an upper and lower mechanism, since it only has a surface 3.

In conclusion, for the above reasons, Applicants submit that the claimed invention is distinguishable over Malow and that the rejection of claims 1-7, 11, 12 and 36-39 be withdrawn.

35 U.S.C. §103 Rejections

Claims 9 and 10 were rejected under 35 U.S.C. §103(a) over Malow in view of USPN 5,906,468 to Vander Syde et al. Claim 13 was rejected under 35 U.S.C. §103(a) over Malow in view of USPN 6,438,928 to Huang et al. Claims 14-18 and 21-25 were rejected under 35 U.S.C. §103(a) over Malow in view of USPN 4,997,176 to Hain. Claim 20 was rejected under 35 U.S.C. §103(a) over Malow in view of Hain in view of Vander Syde et al. These rejections are respectfully traversed.

**Rejection of Claims 14-18 and 21-25 over Malow
and Hain (as it relates to independent claim 15)**

Independent Claim 15

Independent claim 15 recites, in part,

... a single swingable diverting arm configured to feed the product to an ejection station comprising a pinch belt configuration that allows injection of the product into the container.

Malow does not show these features.

In Malow, as admitted by the Examiner, the separating module includes two belts which are moveable. This is not a single swingable diverting arm, which is recited in the claimed invention. Additionally, in Malow, there is no pinch belt configuration. In Malow, the separating module 2 is two parallel belts which are separated by a certain distance. In Hain, although there appears to

be a pinch belt, there is no single swingable diverting mechanism which would feed product to the ejection station. Accordingly, the combination of references do not show all of the features of the claimed invention.

**§103 Rejections Relating
to Dependent Claims**

Applicants submit that the dependent claims are allowable by virtue of being dependent from allowable base claims.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', with a large, stylized flourish at the end.

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